



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,213	11/25/2003	Nyle Elliott	A-8730	4978
20741	7590	11/14/2007	EXAMINER	
HOFFMAN WASSON & GITLER, P.C.			MENDEZ, MANUEL A	
CRYSTAL CENTER 2, SUITE 522			ART UNIT	PAPER NUMBER
2461 SOUTH CLARK STREET				3763
ARLINGTON, VA 22202-3843			MAIL DATE	DELIVERY MODE
			11/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,213	ELLIOTT ET AL.	
Examiner	<b>Art Unit</b>		
Manuel Mendez	3763		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

**WHEN TO FILE A REQUEST FOR REVIEW OF THIS COMMUNICATION:**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 July 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-4, 7 and 8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4, 7, and 8 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_\_  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

In view of the Notice from Withdrawal from Issue Branch and the lack of patentability of the pending claims, the finality established on the Final Office Action dated April 6, 2006 is hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Thornton, Meythaler et al., Stone, and in further view of Binard, et al.** The Kelly patent does not disclose the use of filters at the distal and proximal ends. However, the Thornton patent demonstrates that it is conventional to design catheters having hydrophobic tips; furthermore, in relation to the use of filters in combination with infusion ports, Meythaler et al., demonstrates that such use is conventional in the art. Additionally, Stone demonstrates that the use of hydrophobic and charcoal filters in combination with filters is well known in the art. Finally, concerning the amended language in claims 1 and 7, in figure 7, Binard, et al., demonstrates the conventionality of severing the proximal section of a catheter shaft when the inflation lumen becomes obstructed.

Based on the above observations, for a person of ordinary skill in the art, the modification of the Kelly catheter with hydrophobic or charcoal filters positioned at the

proximal or distal ends of said catheter and the step of severing the proximal end to deflate the balloon would have been considered obvious in view of the conventionality of these enhancements.

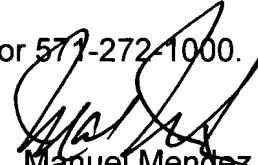
Finally, in response to the arguments in the Appeal Brief concerning the one-way port, and more specifically, the argument stating that "Kelly does not disclose the one-way port disclosed and claimed in the application and Binard does not cure this deficiency", the examiner notes for the record that Meythaler et al. discloses in column 3, lines 17-20, that "[t]he catheter assembly can also include a one-way valve for the introduction of drugs, fluids or medications through the catheter assembly with no back-flow of the introduced materials. With this design, the catheter assembly limits the introduction of pathogens into the system and reduces the potential contact of the health care provider to bodily fluids". Accordingly, for a person of ordinary skill in the art, modifying the apparatus disclosed by Kelly with a one-way valve, as taught by Meythaler et al., would have been considered obvious in view of the conventionality of this enhancement. Moreover, such enhancement would have served to improve the safety of use and the infusion capabilities of the catheter.

### ***Conclusion***

In view of the withdrawal of finality, this action is not a final office action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM